IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 113 of 2005

NARESH KUMAR
V/S
RAMESH CHANDRA

Mr. HS SHRIMALI, for the appellant / petitioner

Mr. KAMAL DAVE, for the respondent

Date of Order : 25.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed by the defendant against the impugned judgments and decrees decreeing the plaintiff's suit for eviction interalia on the ground of reasonable and bonafide necessity, and also deciding the question of comparative hardship in favour of the plaintiff. The appeal was filed on 13.4.2005, and came up for admission on 20.4.2005. On that day only submission made was that the appellant seeks some time to vacate the premises, and in view of that notice was ordered to be issued, and interim order was granted staying execution. Obviously meaning thereby that on merits the was not pressed. Even today, the only request made by the learned counsel for the appellant is for granting some time to the appellant to vacate the premises.

This prayer for grant of time is seriously opposed by the learned counsel for the respondent interalia on the ground that the judgment of the learned lower Appellate Court is of Feb. 2005, and even after respondent entering appearance, in July, 2005, the matter is simply being adjourned on one ground or the other, and the appellant is enjoying possession, and thus the appellant has already got sufficient time. As such no further time is required to be granted.

In my view, obviously since the appeal is not pressed on merits, the same is dismissed.

So far the request for grant of time is concerned, in my view, in the interest of justice three months' time is granted to the appellant to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use

and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/